

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RAM SINGH,

NO. CIV. S-04-1708 LKK/CMK

Plaintiff,

v. _____

PETRO STOPPING CENTERS; and
TODD HUNTER,

Defendants.

STATUS (PRETRIAL SCHEDULING) CONFERENCE

Pursuant to the parties stipulation requesting modification of the court's previous Status Order and good cause appearing, a Status Conference was held in Chambers on September 1, 2005. RICHARD DALRYMPLE appeared as counsel for plaintiff; ALDEN PARKER appeared as counsel for defendant. All dates heretofore set are VACATED and the following dates are SET:

MOTION HEARING SCHEDULES

All law and motion except as to discovery is left open, save and except that it shall be conducted so as to be completed by

1 March 31, 2006. The word "completed" in this context means that
2 all law and motion matters must be **heard** by the above date.
3 Because this date is not necessarily a date previously set aside
4 for law and motion hearings, it is incumbent upon counsel to
5 contact this court's courtroom deputy, Ana Rivas at (916) 930-4133,
6 sufficiently in advance so as to ascertain the dates upon which law
7 and motion will be heard and to properly notice its motion for
8 hearing before that date. Counsel are cautioned to refer to Local
9 Rule 78-230 regarding the requirements for noticing such motions
10 on the court's regularly scheduled law and motion calendar.
11 **Opposition or statement of non-opposition to all motions shall be**
12 **filed not later than 4:30 p.m. fourteen (14) days preceding the**
13 **hearing date, or by proof of service by mail not less than**
14 **seventeen (17) days preceding the hearing date.** This paragraph
15 does not preclude motions for continuances, temporary restraining
16 orders or other emergency applications, and is subject to any
17 special scheduling set forth in the "MISCELLANEOUS PROVISIONS"
18 paragraph below.

19 At the time of filing a motion, opposition, or reply, counsel
20 are directed to email a copy in word processing format to the
21 Judge's Assistant, Tim Hinkle, at thinkle@caed.uscourts.gov.

22 The parties should keep in mind that the purpose of law and
23 motion is to narrow and refine the legal issues raised by the case,
24 and to dispose of by pretrial motion those issues that are
25 susceptible to resolution without trial. To accomplish that
26 purpose, the parties need to identify and fully research the issues

1 presented by the case, and then examine those issues in light of
2 the evidence gleaned through discovery. If it appears to counsel
3 after examining the legal issues and facts that an issue can be
4 resolved by pretrial motion, counsel are to file the appropriate
5 motion by the law and motion cutoff set forth supra.

6 ALL PURELY LEGAL ISSUES ARE TO BE RESOLVED BY TIMELY PRETRIAL
7 MOTION AND A FAILURE TO MAKE SUCH A MOTION WILL ORDINARILY BE
8 VIEWED AS A WAIVER AT THE TIME OF PRETRIAL. COUNSEL ARE CAUTIONED
9 THAT IF ANY LEGAL ISSUE THAT SHOULD HAVE BEEN TENDERED TO THE COURT
10 BY PRETRIAL MOTION MUST BE RESOLVED BY THE COURT AFTER LAW AND
11 MOTION CUTOFF, FOR INSTANCE WHERE THE ISSUE IS JURISDICTION,
12 SUBSTANTIAL SANCTIONS WILL BE LEVIED AGAINST COUNSEL WHO FAIL TO
13 TIMELY FILE AN APPROPRIATE MOTION.

14 Counsel are further reminded that motions in limine are
15 procedural devices designed to address the admissibility of
16 evidence. COUNSEL ARE CAUTIONED THAT THE COURT WILL LOOK WITH
17 DISFAVOR UPON SUBSTANTIVE MOTIONS PRESENTED IN THE GUISE OF MOTIONS
18 IN LIMINE AT THE TIME OF TRIAL.

19 **DISCOVERY**

20 No modifications of the discovery requirements found in the
21 Federal Rules is ordered.

22 All discovery is left open, save and except that it shall be
23 so conducted as to be completed by January 31, 2006. The word
24 "completed" means that all discovery shall have been conducted so
25 that all depositions have been taken and any disputes relative to
26 discovery shall have been resolved by appropriate order if

1 necessary and, where discovery has been ordered, the order has been
2 complied with. Motions to compel discovery must be noticed on the
3 magistrate judge's calendar in accordance with the local rules of
4 this court and so that such motions will be heard not later than
5 December 31, 2005. In this regard, all counsel are to designate
6 in writing and file with the court and serve upon all other parties
7 a final list of the names of all experts that they propose to
8 tender at trial not later than forty-five (45) days before the
9 close of discovery herein established. Accompanying the
10 designation shall be the written report specified in Fed. R. Civ.
11 P. 26 A2B. All experts so designated are to be fully prepared to
12 render an informed opinion at the time of designation so that they
13 may fully participate in any deposition taken by the opposing
14 party. Experts will not be permitted to testify at the trial as
15 to any information gathered or evaluated, or opinion formed, after
16 deposition taken subsequent to designation.

17 An expert witness not appearing on said lists will not be
18 permitted to testify unless the party offering the witness
19 demonstrates: (a) that the necessity of the witness could not have
20 been reasonably anticipated at the time the lists were exchanged;
21 (b) the court and opposing counsel were promptly notified upon
22 discovery of the witness; and (c) that the witness was promptly
23 proffered for deposition.

24 **MID-LITIGATION STATEMENTS**

25 Not later than fourteen (14) days prior to the close of
26 discovery, all parties shall file with the court and serve on all

1 other parties a brief statement summarizing all law and motion
2 practice heard by the court as of the date of the filing of the
3 statement, whether the court has disposed of the motion at the time
4 the statement is filed and served, and the likelihood that any
5 further motions will be noticed prior to the close of law and
6 motion. The filing of this statement shall not relieve the parties
7 or counsel of their obligation to timely notice all appropriate
8 motions as set forth above.

9 **FINAL PRETRIAL CONFERENCE**

10 The Final Pretrial Conference is **SET** for June 26, 2006, at
11 1:30 p.m. Counsel are cautioned that counsel appearing for
12 Pretrial will in fact try the matter.

13 Counsel for all parties are to be fully prepared for trial at
14 the time of the Pretrial Conference, with no matters remaining to
15 be accomplished except production of witnesses for oral testimony.
16 Counsel are referred to Local Rules 40-280 and 16-281 relating to
17 the contents of and time for filing Pretrial Statements. In
18 addition to those subjects listed in Local Rule 16-281(b), the
19 parties are to provide the court with a plain, concise statement
20 which identifies every non-discovery motion tendered to the court,
21 and its resolution. A FAILURE TO COMPLY WITH LOCAL RULES 40-280
22 AND 16-281 WILL BE GROUNDS FOR SANCTIONS.

23 The parties shall file Separate Pretrial Statements, the
24 contents and timing of which are set forth in Local Rule 16-281,
25 except that the parties are to prepare a JOINT STATEMENT with
26 respect to the undisputed facts and disputed factual issues of the

1 case. See Local Rule 16-281(b) (3), (4), and (6). The parties are
2 reminded to include in their joint statement all disputed and
3 undisputed special factual information as required by Local Rule
4 16-281(b) (6).

5 The undisputed facts and disputed factual issues are to be set
6 forth in two separate sections. In each section, the parties
7 should identify first the general facts relevant to all causes of
8 action. After identifying the general facts, the parties should
9 then identify those facts which are relevant to each separate cause
10 of action. In this regard, the parties are to number each
11 individual fact or factual issue. Where the parties are unable to
12 agree as to what factual issues are properly before the court for
13 trial, they should nevertheless list in the section on "DISPUTED
14 FACTUAL ISSUES" all issues asserted by any of the parties and
15 explain by parenthetical the controversy concerning each issue.
16 Each individual disputed fact or factual issue shall include the
17 following introductory language: "Whether or not" The
18 parties should keep in mind that, in general, each fact should
19 relate or correspond to an element of the relevant cause of action.
20 Notwithstanding the provisions of Local Rule 16-281, the Joint
21 Statement of Undisputed Facts and Disputed Factual Issues is to be
22 filed with the court concurrently with the filing of plaintiff's
23 Pretrial Statement. If the case is tried to a jury, the undisputed
24 facts will be read to the jury.

25 Pursuant to Local Rule 16-281(b) (10) and (11), the parties are
26 required to provide in their Pretrial Statements a list of

1 witnesses and exhibits that they propose to proffer at trial, no
2 matter for what purpose. These lists shall not be contained in the
3 Pretrial Statement itself, but shall be attached as separate
4 documents to be used as addenda to the Final Pretrial Order.
5 Plaintiff's exhibits shall be listed **numerically**; defendant's
6 exhibits shall be listed **alphabetically**. In the event that the
7 alphabet is exhausted, defendant's exhibits shall be marked "2A-2Z,
8 3A-3Z, etc." The Pretrial Order will contain a stringent standard
9 for the proffering of witnesses and exhibits at trial not listed
10 in the Pretrial Order. Counsel are cautioned that the standard
11 will be strictly applied. On the other hand, the listing of
12 exhibits or witnesses which counsel do not intend to call or use
13 will be viewed as an abuse of the court's processes.

14 Pursuant to Local Rule 16-281(b)(12), a party is required to
15 provide a list of all answers to interrogatories and responses to
16 requests for admission that the party expects to offer at trial.
17 This list should include only those documents or portions thereof
18 which the party expects to offer in its case-in-chief. Unless
19 otherwise barred by a rule of evidence or order of this court, the
20 parties remain free to tender appropriate discovery documents
21 during trial for such purposes as, but not limited to, impeachment
22 or memory refreshment.

23 Pursuant to Local Rule 16-281(b)(8), the parties' Pretrial
24 Statements shall contain a "statement of legal theory, etc." Each
25 party shall commence this section by specifying as to each claim
26 whether federal or state law governs, and if state law, the state

1 whose law is applicable.

2 Counsel are also reminded that, pursuant to Fed. R. Civ. P.
3 16, it will be their duty at the Pretrial Conference to aid the
4 court in (a) formulation and simplification of issues and the
5 elimination of frivolous claims or defenses; (b) settling of facts
6 which should be properly admitted; and (c) the avoidance of
7 unnecessary proof and cumulative evidence. Counsel must prepare
8 their Pretrial Statements, and participate in good faith at the
9 Pretrial Conference, with these aims in mind. A FAILURE TO DO SO
10 MAY RESULT IN THE IMPOSITION of SANCTIONS which may include
11 monetary sanctions, orders precluding proof, eliminations of claims
12 or defenses, or such other sanctions as the court deems
13 appropriate.

14 **TRIAL SETTING**

15 Trial is **SET** for September 26, 2006, at 10:30 a.m. Trial will
16 be by jury. The parties represent in good faith that the trial
17 will take approximately ten (10) days.

18 **SETTLEMENT CONFERENCE**

19 A Settlement Conference is now SET before the Honorable Craig
20 M. Kellison on September 19, 2005 at 1:30 p.m. at 2986 Bechelli
21 Lane, Third Floor, Redding, California.

22 Counsel are directed to submit settlement conference
23 statements to the settlement judge **not later than seven (7) days**
24 **prior to the conference.** At counsel's option, such statements may
25 be submitted in confidence pursuant to Local Rule 16-270(d).

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1 Counsel are cautioned to have a principal capable of
2 disposition present at the Settlement Conference or to be fully
3 authorized to settle the matter on any terms and at the Settlement
4 Conference.

5 **MISCELLANEOUS PROVISIONS**

6 The parties are reminded that pursuant to Fed. R. Civ. P.
7 16(b), the Status (pretrial scheduling) Order **shall not be modified**
8 **except by leave of court upon a showing of good cause.** Counsel are
9 cautioned that changes to any of the scheduled dates will
10 necessarily result in changes to all other dates. Thus, even where
11 good cause has been shown, the court will not grant a request to
12 change the discovery cutoff date without modifying the pretrial and
13 trial dates.

14 **Agreement by the parties pursuant to stipulation does not**
15 **constitute good cause. Nor does the unavailability of witnesses**
16 **or counsel, except in extraordinary circumstances, constitute good**
17 **cause.**

18 The parties are reminded of their continuing obligation to
19 supplement their statements relative to the identification of
20 parent corporations and any publicly held company that owns 10% or
21 more of the party's stock within a reasonable time of any change
22 in the information.

23 The parties are admonished that they are not to cite or refer
24 to any of the quotations inscribed in the pavers on the front plaza
25 of the United States Courthouse in any written or oral presentation
26 to the court or a jury.

1 There appear to be no other matters presently pending before
2 the court that will aid the just and expeditious disposition of
3 this matter.

4 IT IS SO ORDERED.

5 DATED: September 6, 2005.

6 /s/Lawrence K. Karlton
7 LAWRENCE K. KARLTON
8 SENIOR JUDGE
9 UNITED STATES DISTRICT COURT
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